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EXAMINER

HARMON, C

ART UNIT	PAPER NUMBER
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3721

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DATE MAILED:

11/24/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/372,009

Applicant(s)

FUKUDA ET AL

Examiner

Christopher R Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 August 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 1999 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☒ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### **Election/Restrictions**

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: A packaging machine shown in figures 1-10 pertaining to claims 1-5.

Species II: A packaging machine shown in figure 11 pertaining to claims 6-17.

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim appears generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are

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added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. After a telephone conversation between applicant's attorney, Mr. Keiichi Nishimura, and examiner Christopher Harmon (AU 3721) on November 3, 1999, a provisional election was made by Mr. Nishimura the following day November 4, 1999, without traverse, to prosecute the invention of II, claims 6-17. Applicant in replying to this Office Action must make affirmation of this election. Claims 1-5 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### ***Drawings***

5. The drawings are objected to because the elements of flow diagrams of figures 8 and 12 are not properly labeled. Flow diagrams require text labels. Correction is required.

#### ***Specification***

6. The disclosure is objected to because of informalities contained within; for example:  
  
The phrase "...the attachment plate 72 engaging the screw bar 74 is made thicker," (page 9, lines 12-13) is unclear and indefinite. It is unclear as to what "thicker" refers to.  
  
The phrase "If the rod 66'a is pushed out," (page 12, line 1) is unclear and indefinite. A prior position/location of rod 66'a has not been conveyed, etc.  
  
Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 6-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 6 contains language which makes it unclear. The phrase “means for bending an elongated bag-making film into a tubular form around said chute by mutually overlapping side edges of said film;” (claim 6, lines 3 and 4), is unclear whether overlapping the edges of the film is the means for bending the film, or an intended limitation of the means for bending the film.

Also, the paragraph regarding the air cylinder is indefinite; “...both for moving...and for controlling...” (claim 6, lines 7-11). The functions of the air cylinder should be finitely stated, either independently or in close proximity of one another. As written in the claim, the controlling function could be assumed to be in reference to the chute, retracted position, film, etc.

The alternative language, either/or combination, addressing the switching means (claim 6, lines 16-18) causes uncertainty with respect to the scope of the claim.

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Regarding the terms "higher pressure" and "lower pressure" in claims 6-9, etc., it is unclear whether the higher/lower pressure of claim 8 (lines 2 and 3 respectively) are separate than the higher/lower pressures stated in claim 6 (lines 13 and 14 respectively). It creates confusion for not only these claims, but also to following claims which have antecedent basis upon these limitations.

Furthermore, the phrase "...controllingly varying..." (claims 12-17, line 2) is unclear and awkward.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6-17, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda et al. (US 5,125,217) in view of Simionato (US 4,660,356) and further view of Kreager (US 4,555,289).

Fukuda et al. disclose an apparatus (figure 1) for form/fill/seal packaging machine with a longitudinal sealer comprising a chute 115, package former 103, movable heater unit 55, servo motor 45, and air cylinder 78. In operation, the heating unit 55 moves

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against chute 115 by means of air cylinder 78 in order to seal packaging S. "...the pressure applied on the film material S for its vertical sealing by the vertical-seal belt 55 can be controlled by adjusting the operation of the separation-adjusting servo motor 45." (column 6, lines 48-51).

In order to retract the heating unit from the chute, "...servo motor 45 is activated... The two pull-down belts 30 and the vertical-seal belt 55 are thereby moved radially outward or inward with respect to the central axis of the tubular film material in a mutually coordinated manner." (column 6, lines 30-39).

Fukuda et al. do not disclose a two chambered air cylinder for moving the heating unit. Simionato teaches selectively controlled stacked cylinders 9 and 10 (figure 1), acting along the same axis. The cylinders move belts 1, slides 7, rollers 4, etc. in order to contact and move the packaging material 3 downwards along chute 2. Simionato also teaches the possibility of substitution for the cylinders; "...it is obvious that the two cylinders 10 could be replaced by other control means, for example, by worm screw, cam or electromechanical control means, which can be operated either automatically or manually, with-out modifying this invention in any way." (column 3, lines 12-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the cylinder of Fukuda et al. with a dual chambered air cylinder as taught by Simionato to move the heat sealing unit between various positions.



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The air cylinder disclosed by Fukuda et al. is not specified as being controlled by two separate air pressures, nor having switching means between the two. Kreager teaches a method and apparatus forming fin-type back seal using cohesive sealants without externally applied heat in which rollers 72 and 82 are movable by means of air cylinders 80 and 88 (figure 1). The apparatus also comprises pressure regulator 92, air activation valves 96, and handle operators 98 and 100 (figure 4). "The air applied to cylinders 80 and 88 (usually at different pressures) is controlled by separate air activation valves." (column 3, lines 47-49). Air pressures are stated as "... (e.g., at 15-35 PSI)..." (column 3, lines 41-42) and "...e.g., 0-15 PSI." (column 3, line 46) for the separate cylinders 88 and 80, respectively.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to include the air pressure system (regulator, valves, etc.) as taught by Kreager with the packaging apparatus of Fukuda et al., in view of Simionato, in order to supply the dual air cylinder with adjustable high and low pressures to enable selective control/operation/adjustment of the dual air cylinder for desired lengths of time, while performing all desired forming/sealing/packaging functions.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703 308 8643. The examiner can normally be reached during normal business hours Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached at 703-308-1789. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3576



PETER VO  
SUPERVISORY PATENT EXAMINER  
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